



July 20, 1999

Mr. John M. Hill
Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR99-2037

Dear Mr. Hill:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126460

The Town of Addison (the "town"), which your office represents, received a request from an attorney for information concerning the arrest of his client. Specifically, the requestor asks for "a videotape of the incident," and the "name and phone number" of a potential witness pertaining to the booking of the requestor's client at the town jail. In response to the request, you submit to this office for review the information which you assert is responsive.¹ You contend that the submitted information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception and arguments you raise, and have reviewed the information submitted.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information. Specifically, we note that you have submitted a "Prisoner Booking Report" which contains the requested "name and phone number" of the witness. The remaining information is not responsive to the request, since it was not requested. We further note that some of the information in the submitted booking report is confidential by law. See Gov't Code §§ 552.352, 552.130 (release and use of information obtained from motor vehicle records).

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The town has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The town must meet both prongs of this test for information to be excepted under section 552.103(a). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the town must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989).

Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you have supplied to this office the requestor's letter and assert that the "letter clearly establishes that litigation in this matter is reasonably anticipated." You state that the requestor's letter is a "notice of claim" letter for damages on behalf of his client.² Based on your arguments and the submitted records, we conclude that you have failed to meet the requisite showing that litigation is reasonably anticipated. Therefore, you may not rely on section 552.103 to withhold any of the submitted information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

² Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney, *and* (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, reading "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning of the first name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126460

Encl: Submitted documents

cc: Mr. Gary Johnson
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(w/o enclosures)